



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

May 05, 2008

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Jose R. Olmo**  
Tax Registry No. 887497  
License Division  
Disciplinary Case Nos. 81713/06, & 82422/06

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on May 23, 2007 and was charged with the following:

**DISCIPLINARY CASE NO. 81713/06**

1. Said Detective Jose Olmo, assigned to the Sex Offender Monitoring Unit, while on-duty, on or about August 15, 2005, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that without authorization the Respondent altered a photo copy of a New York State Driver's License belonging to an individual known to the Department and included in such alteration derogatory information about said person and placed, in public view, numerous photocopies of said New York State Driver License about the Respondent's unit of assignment. (As amended)

**P.G. 203-10, Page 1, Paragraph 5**

**PROHIBITED CONDUCT**

**DISCIPLINARY CASE NO. 82422/06**

1. Said Detective Jose Olmo, while assigned to the Sex Offenders Monitoring Unit, while on-duty, on or about April 27, 2005, May 18, 2005, June 1, 2005, June 8, 2005 and June 15, 2005, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that, said Detective having become aware of corruption or serious misconduct involving two members of the service known to the Department, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required.

**P.G. 203-10, Page 1, Paragraph 5**

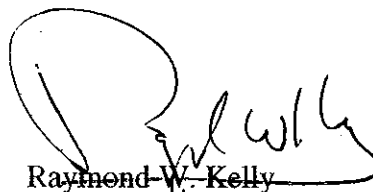
**PUBLIC CONTACT/PROHIBITED CONDUCT  
GENERAL REGULATIONS**

**DETECTIVE JOSE OLMO**

**DISCIPLINARY CASE NOS. 81713/06 & 82422/06**

In a Memorandum dated October 4, 2007, Assistant Deputy Commissioner Vinal found Respondent Olmo **GUILTY** of the sole Specification in Disciplinary Case No. 81713/06, and Not Guilty of the sole Specification in Disciplinary Case No. 82422/06. Having read the Memorandum and analyzed the facts of these instant matters, I approve the findings, but disapprove the recommended penalty.

The type of misbehavior and misconduct committed by Respondent Olmo disrupted the efficiency of this Department and negatively impacted upon the personal and professional lives of a number of members of the service. As such, the penalty for this disciplinary matter shall consist of the forfeiture of fifteen (15) Vacation Days.



Raymond W. Kelly  
Police Commissioner



POLICE DEPARTMENT

October 4, 2007

MEMORANDUM FOR: Police Commissioner

Re: Detective Jose Olmo  
Tax Registry No. 887497  
License Division  
Disciplinary Case Nos. 81713/06 & 82422/06  
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The above-named member of the Department appeared before me on May 23, 2007,<sup>1</sup> charged with the following:

Disciplinary Case No. 81713/06

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P.G. 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT

Disciplinary Case No. 82422/06

1. Said Detective Jose Olmo, while assigned to the Sex Offenders Monitoring Unit, while on-duty, on or about April 27, 2005, May 18, 2005, June 1, 2005, June 8, 2005 and June 15, 2005, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that, said Detective having become aware of corruption or serious misconduct involving two members of the service known to the Department, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required.

P.G. 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT/PROHIBITED CONDUCT  
GENERAL REGULATIONS

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<sup>1</sup> The record was held open until June 15, 2007, for the entry of a transcript and for written summations.

P.G. 207-21 Pages 1-2 – ALLEGATIONS OF CORRUPTION AND SERIOUS  
MISCONDUCT AGAINST MOS, COMPLAINTS

The Department was represented by Yadhira Gonzalez-Taylor, Esq. Department Advocate's Office, and the Respondent was represented by James Moschella, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 81713/06

The Respondent is found Guilty.

Disciplinary Case No. 82422/06

The Respondent is found Not Guilty.

EVIDENCE

The Department's Case

The Department called Sergeant Guy Scavelli, Lieutenant Marvin Kenner, Police Officer Nela Gomez and Sergeant Noel Lamberti as witnesses.

Sergeant Guy Scavelli

Scavelli, a twelve-year member of the Department who is currently assigned to Internal Affairs Bureau Group No. 27, testified that he was a detective assigned to the Sex Offender Monitoring Unit (SOMU) for approximately three years, starting in the

summer, 2003. Nela Gomez, who is now a Police Officer, was a Cadet assigned to SOMU. Scavelli recalled that on August 15, 2005, he was assigned to work a 7:00 a.m. to 3:00 p.m. tour and that when he arrived at SOMU he observed a flier which contained a size-enhanced photocopy of Gomez' driver's license. He observed that this flier was posted on the walls, was on all of the desks in the unit, and was also posted inside the male locker room. Scavelli identified a document as a copy of the flier he observed that day (Department's Exhibit No. 1) [On this flier, some of Gomez' driver's license information is altered. Gomez' last name is replaced with the name "SCAVELLI," Gomez' residence address is changed to "69-69 MARRIED MAN LANE" in "P-WHIPPED," New York. Also, above Gomez' license photo is a cartoon bubble which contains typed words and depicts Gomez saying: "Guy! Guy! I told you to carry my bag up to room 710. When you are finished with that, TO A SQUAT MOVE, Skippy!"].

Scavelli recalled that this flier was also on top of the sign-in book where members assigned to SOMU began their tour of duty and that he also observed the photocopy posted in the area where registered sex offenders, who are monitored by SOMU pursuant to "Megan's law," enter the command to report changes of residence. He observed about four or five of these fliers posted on the wall in that area. Scavelli testified that initially he did not understand why the flier depicted Gomez' driver's license or why it had been posted in SOMU because Gomez had already transferred to the Police Academy and was no longer assigned to SOMU. He telephoned Gomez because he was concerned that someone had stolen her driver's license from her purse since he assumed that the person who had photocopied her license had possessed it. Gomez told him that she was in possession of her driver's license. Scavelli testified that when he examined the flier, he

was shocked when he saw that Gomez' last name on her license had been changed to "Scavelli," and that her address had been changed to "69-69 Married Man Lane, P-whipped." Scavelli testified that these alterations indicated to him that the writer was implying that he and Gomez were so close they might as well be married. Scavelli further testified that the house address number of "69-69" indicated to him that the person who wrote these numbers was referring to "a sexual position." He further testified that "Married Man Lane," the street that had been inserted on the photocopy, indicated to him that either "I'm married or was married." He took down all of the fliers he saw posted and he brought one to Gomez to show her.

Scavelli testified that he and Officer Gomez presently have a "boyfriend-girlfriend" relationship but that on August 15, 2005, he and Gomez, who was a Cadet then, were merely "friends" and were not dating. Scavelli asserted that he and Gomez were not intimate at any time while she was assigned to SOMU. Scavelli testified that he had no personal knowledge as to who altered the photocopy of Officer Gomez' driver's license or who posted these fliers at SOMU. After Scavelli saw the photocopies on the wall and on the desks, he notified his supervisor, Sergeant Brick. He testified that he has known the Respondent for about five years and that although at present they are "not friends," at one point prior to August 15, 2005, he and the Respondent had been friends. Scavelli acknowledged that members assigned to SOMU often played practical jokes on one another and that he might have once played a "prank" on the Respondent, although he could not specifically recall having done this. Scavelli recalled that the Respondent met his wife at a surprise birthday party for him on his thirtieth birthday. Scavelli was

not aware of any friendship developing between the Respondent and his wife. The Respondent never offered any marital advice to Scavelli.

Scavelli testified that on September 26, 2006, he was interviewed inside the Chief of Detectives office at One Police Plaza pursuant to Patrol Guide procedure 206-13. Scavelli testified that his interviewers told him that he was the subject of an investigation regarding whether he and then-Cadet Gomez had laid down together on a couch in the male locker room and also regarding whether he had purchased a tape recorder while he was on duty. He testified that disciplinary action was brought against him only for buying the recorder while on duty and that he was issued a command discipline.

On cross-examination, Scavelli testified that to his knowledge the only notification that Gomez received about the flier was when he told her about it and then brought one to her. Scavelli testified that he is aware that the Respondent is charged with failing to report that he had observed Scavelli and Cadet Gomez on a couch together inside the male locker room. He testified that he was never personally subjected to any discipline regarding the allegation that he and Gomez had been together on a couch in the male locker room. Scavelli testified that he has never been in a prone position with Gomez in any fashion in the SOMU male locker room and that he has never committed any misconduct inside the SOMU male locker room and has never engaged in any misconduct or inappropriate conduct with Gomez inside the male locker room. He testified that not only has he never been disciplined in any manner with regard to the allegation that he engaged in inappropriate behavior with Gomez inside the SOMU male locker room, he has never received any letter of instruction or any informal discipline with regard to that allegation.

When he was asked what types of practical jokes and pranks members of the SOMU command played on one another, Scavelli recounted that while Gomez was still assigned to SOMU, a birthday party was held for her and she was presented with a birthday cake on which the icing was shaped as the rear end of a female dressed in blue jeans. Gomez did not tell Scavelli that she was offended by this birthday cake. Scavelli also recalled that on one workday, he put on a woman's bra and stuffed it with material to make it appear that he had breasts and he walked around the office wearing the bra. Scavelli recalled that one day he was in the locker room of the command that adjoins SOMU and that he observed that someone had posted on the wall a drawing of him in a sumo wrestling outfit about to wrestle a Japanese sumo wrestler and that it contained captions of them speaking to each other. The Japanese sumo wrestler is depicted stating to Scavelli, "You little bitch, now I'm going to sit on your face." Scavelli testified that he was not offended by the manner in which he was depicted in this flier and he did not file a complaint with anyone regarding this flier.

Lieutenant Marvin Kenner

Lieutenant Kenner, who is assigned to the Chief of Detectives Investigation Unit, testified that on or about June 6, 2006, pursuant to an investigation, he had a telephone conversation with Mrs. Scavelli who told him that she had obtained information from the Respondent that her husband, Sergeant Scavelli, and then-Cadet Gomez were observed "sitting on each other's lap" in the locker room of the command.

On cross-examination, Kenner was confronted with an investigative worksheet prepared by Sergeant Lamberti which indicates that on June 6, 2006, he conducted an



interview of Mrs. Scavelli. Kenner testified that he and Lamberti were in the same office when the telephone interview was conducted and that because it was conducted via speaker phone both he and Lamberti could hear Mrs. Scavelli. Kenner recalled that he was the one who asked the questions of Mrs. Scavelli and that Sergeant Lamberti prepared the worksheet. Kenner was confronted with the fact that the worksheet prepared by Sergeant Lamberti states that "Mrs. Scavelli essentially stated the following." Kenner agreed that the inclusion of the word "essentially" in the worksheet indicates that the statement on the report attributed to Mrs. Scavelli was not an exact quotation of what she had stated, rather it was the sum and substance of what she told them. Kenner conceded that the worksheet Lamberti prepared does not indicate that Mrs. Scavelli had told them that the Respondent had stated that he had seen her husband and Gomez sitting on top of one another. Kenner confirmed that Mrs. Scavelli made no allegation that the Respondent had told her that he had seen her husband and Gomez kissing or having any sexual contact. Lamberti's worksheet regarding their interview of Scavelli's wife was admitted into evidence (RXA)[Lamberti wrote that Scavelli's wife stated that the Respondent had told her that he had observed Scavelli and Gomez "sitting on the couch in the male officers' locker room" and that Scavelli's wife "was unable to provide any other details concerning their activity on the couch."]

Police Officer Nela Gomez

Probationary Police Officer Nela Gomez, who is presently assigned to the 23 Precinct, testified that she and the Respondent dated for a short period while she was assigned to SOMU as a Cadet but that she broke off their relationship in March, 2005,

after the Respondent became jealous that she was socializing with other male members assigned to SOMU. She would sometimes sit inside the male locker room while she was assigned to SOMU because it was quiet there. She would study for school there. Other female members also entered this locker room and no one told her she should not be there until about one month before she left SOMU, when a sergeant told her that she should not sit inside the male locker room. When Scavelli telephoned her on or about August 15, 2005, and described to her what was written on the altered photocopy of her driver's license (DX 1) and told her that it had been posted and distributed as a flier throughout SOMU, she became "very upset" about the content of the flier. She testified that she was never present sitting inside the SOMU male locker room while male members were changing their clothes and she was never in a prone position with Scavelli on the couch.

On cross-examination, she denied that she had ever engaged in any misconduct with Scavelli. She has never received any letter of instruction or any formal or informal discipline regarding any of the occasions when she was present inside the SOMU male locker room.

Sergeant Noel Lamberti

Sergeant Lamberti, assigned to the Chief of Detectives Investigative Unit, testified that he conducted three official Department interviews of the Respondent. Lamberti recalled that at his first official Department interview, the Respondent stated that he had seen Scavelli and Gomez lying down intimately together on the couch inside the male locker room and that at his second official Department interview, the

Respondent had stated that he was uncomfortable changing his clothes while Scavelli and Gomez were present together inside the locker room.

On cross-examination, Lamberti acknowledged his testimony that the Respondent had seen Scavelli and Gomez engaging in "intimate" behavior was his own interpretation of what the Respondent had said to him. Lamberti was shown a transcript of the Respondent's third and final official Department interview, conducted on November 1, 2006 (RX B). Lamberti also acknowledged that at this interview, when the Respondent was asked to describe the "inappropriate behavior" he had seen Scavelli and Gomez engaging in, he stated that he had seen them "sitting on the couch. One person sitting, one person laying with their feet across the other person." (RXB p. 4)

Lamberti further acknowledged that at this last official Department interview, the Respondent was told that he was being questioned as "a witness," not as a subject as he should have been warned. Lamberti admitted that "this was a mistake," since the Respondent was, in fact, the subject of that official Department interview.

Lamberti agreed that at this interview the Respondent had stated that either June 8, 2005 or June 15, 2005 was the most recent date on which he may have taken lost time, entered the male locker room, and observed Scavelli and Gomez together inside the locker room. Lamberti's investigation revealed that the Respondent requested lost time on June 8, 2005, but not on June 15, 2005.

#### The Respondent's Case

The Respondent called Detective Patrick Boylan and Detective Patrick Perri as witnesses and he testified in his own behalf.

Detective Patrick Boylan

Detective Boylan, assigned to SOMU, testified that he had personally observed Scavelli and Gomez sitting together on the couch in the male officers' locker room and that he saw "nothing inappropriate" going on between them.

Detective Patrick Perri

Detective Perri testified that he agreed to help the Respondent, who was his partner, play a prank on Scavelli. Perri helped the Respondent as he distributed copies of the enlarged photocopy of Gomez' license on which the Respondent had made alterations. They engaged in this prank in order to tease Scavelli. Perri testified that it was well known within SOMU that Scavelli and Gomez "were an item." Perri testified that he did not personally post any copies on any walls, he only placed them on the desks of members assigned to SOMU.

The Respondent

The Respondent testified that as a result of the charge in Disciplinary Case No. 81713/06, on November 14, 2006, he was placed on modified assignment and he was then immediately transferred from SOMU to the License Division, where he is still assigned.

He recalled that he and then-Cadet Gomez had become friends while working together in SOMU and that he had loaned her money. In April, 2005, he observed her holding hands with Scavelli, who he knew was married, and sitting with him inside the male locker room. When he told Gomez, "This is not how you want to start your career,"

she became upset at him and implied that she and Scavelli were in love. She told him to mind his own business and they stopped speaking to each other. At the end of June, 2005, when Gomez left SOMU to enter the Police Academy, he confronted her regarding the money he had loaned her that she had still not paid him back.

He testified that members assigned to SOMU regularly played pranks and jokes on each other and he described the practical jokes and pranks that members had played on one another which Scavelli had recounted during his testimony.

On or about August 15, 2005, he found a copy of Gomez' New York State Driver's License on a desk top. He decided to play a prank on Scavelli. He made an enlarged photocopy of Gomez' license and he altered this photocopy by replacing Gomez' last name with "SCAVELLI" and by changing Gomez' residence address to "69-69 MARRIED MAN LANE" in "P-WHIPPED" New York. Above Gomez' photo he typed: "Guy! Guy! I told you to carry my bag up to room 710. When you are finished with that, TO A SQUAT MOVE, Skippy!" (DX 1)

He made a number of copies of this altered photocopy and distributed them around SOMU with the help of his partner, Detective Patrick Perri. He did not tell anyone outside of SOMU about the prank and he did not send a copy of the altered photocopy to Gomez or to anyone outside of SOMU.

The Respondent testified that when he wrote "69-69" he was not making a sexual reference and that "P-WHIPPED" was a reference to "pistol whipped." The Respondent sincerely apologized for having engaged in this juvenile "prank." The Respondent testified that when he altered the photocopy and distributed it around SOMU he had no

intention of embarrassing Gomez, who was no longer assigned to SOMU, and that he was not jealous of Scavelli's relationship with Gomez.

The Respondent testified that at his three official Department interviews, he consistently told his interviewers that on three occasions during April, May, and June, 2005, when he had entered the male locker room to change for softball, he had observed Scavelli and Gomez together on a couch inside the locker room. He was unsure of the exact three dates but he was certain that they were days when he took lost time so that he could play softball.

At his last official Department interview, on November 1, 2006, he was told by his interviewers that he was being questioned as a witness, not a subject. He told his interviewers that either June 8, 2005 or June 15, 2005 was the last date on which he may have taken lost time, entered the male locker room to change for softball, and observed Scavelli and Gomez together inside the locker room.

On cross-examination, he acknowledged that he had confronted Scavelli about his relationship with Gomez and that he had told him that "you are going down the path of darkness." When Scavelli's wife, who he had previously met at a social event, telephoned him and asked him about her husband and Gomez, he told her that he had seen her husband and Gomez sitting together on a couch in SOMU's male locker room.

The Respondent testified that on the three occasions when he observed Scavelli and Gomez sitting together on the couch in the male officers' locker room, he had felt uncomfortable changing into his softball uniform in front of Gomez. He felt that their activity constituted inappropriate behavior, but not misconduct.

FINDINGS AND ANALYSISDisciplinary Case No. 81713/06

It is charged that the Respondent, while on-duty, on or about August 15, 2005, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he made an enlarged photocopy of Gomez' New York State Driver's License, he altered this photocopy by changing some of the information on it to include derogatory information about her (DX 1), he made a number copies of this altered photocopy and he placed these copies in open view by distributing them throughout the Sex Offender Monitoring Unit (SOMU).

The Respondent acknowledged that, with the assistance of his partner, Detective Perri, he did all of the above. However, he takes exception to the assertion in the charge that the altered entries he made on the photocopy of Gomez' license constituted derogatory information about Gomez. Rather, the Respondent claimed that distributing the altered photocopy of Gomez' driver's license merely constituted an internal SOMU "joke," and that Scavelli, not Gomez, was the sole target of this "prank." The Respondent's claims are inconsistent with what he wrote and typed on the photocopy of Gomez' license and they are also inconsistent with his action of personally informing Scavelli's wife that he had seen her husband and Gomez together on a couch in SOMU's male locker room.

The Respondent acknowledged that he altered the photocopy by replacing Gomez' last name with "SCAVELLI," that he altered Gomez' residence address by changing it to "69-69 MARRIED MAN LANE" in "P-WHIPPED" New York, and that above Gomez' photo (inside a cartoon caption as if Gomez was speaking) he typed:

“Guy! Guy! I told you to carry my bag up to room 710. When you are finished with that, TO A SQUAT MOVE, Skippy!” (DX 1 - Hereinafter referred to as “the flier”).

I reject the Respondent’s disingenuous testimony that when he wrote “69-69” on the flier as the house number he had no intention of communicating any sexual reference. I also reject the Respondent’s disingenuous testimony that when he wrote “P-WHIPPED” he was referring to “pistol whipped” not “pussy whipped.” He offered no plausible explanation for why he would abbreviate the word “pistol” with the letter “P.” Also, the orders that Gomez is depicted issuing to “Guy” on the flier (which the Respondent typed inside the cartoon bubble) are consistent with an interpretation that the Respondent wanted to make it clear to readers that the letter “P” in “P-WHIPPED” was an abbreviation for “Pussy,” a crude vulgarity he clearly did not want to spell out. Finally, his claim that “P-WHIPPED” means “pistol whipped” is inconsistent with his entry “69-69 MARRIED MAN LANE,” which clearly imparts a sexual connotation. Viewed together, the specific name and address changes the Respondent made convey the unmistakable message that Gomez should adopt the last name “Scavelli” and change her residence address to “69-69 Married Man Lane” because she was having sexual relations with Scavelli a married man who she had “pussy-whipped.”

Based on this analysis, I reject the Respondent’s claim that the flier was only directed at Scavelli and that he had no intent to embarrass Gomez because the content of the flier reflected poorly on her moral character as well as his. Moreover, even if I accept the Respondent’s claim that he was not jealous of Scavelli’s relationship with Gomez, the Respondent had another motive to want to embarrass Gomez. He acknowledged that only a month or two prior to preparing the flier, he had confronted her about paying back



money he had loaned her that she still owed him. I also reject the Respondent's argument that Gomez, who was no longer assigned to SOMU, would never have learned about the flier if Scavelli had not told her about it. The Respondent knew that his wide-spread distribution of the flier within SOMU would result in Gomez learning of its contents sooner or later.

Finally, I reject the Respondent's claim that his preparation and distribution of the flier constituted nothing more than a joke and was consistent with previous internal SOMU pranks. None of the other SOMU locker room pranks described at this trial constituted an accusation of engagement in an illicit sexual relationship and the Respondent's claim is also inconsistent with the fact that he voluntarily informed Scavelli's wife that he had seen her husband and Gomez together on a couch in SOMU's male locker room. The Respondent's action of divulging what he had observed to Scavelli's wife shows that his preparation and distribution of the flier did not constitute innocent teasing of Scavelli and Gomez regarding their relationship. Rather, I can only conclude that he included explicit sexual references on the flier because he wanted to expose and ridicule their relationship for the purpose of embarrassing them since, as he testified, he believed that Scavelli and Gomez were "going down the path of darkness."

The Respondent is found Guilty.

Disciplinary Case No. 82422/06

It is charged that the Respondent, while on-duty on or about April 27, 2005, May 18, 2005, June 1, 2005, June 8, 2005 and June 15, 2005, the Respondent became aware of corruption or serious misconduct involving two members of the service (Scavelli and

Gomez) and that he subsequently failed to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center about this corruption or serious misconduct.

Initially, I will analyze the Respondent's claim that this charge is time-barred under the applicable 18-month statute of limitations. It is not disputed that the Respondent was first served with this charge on December 12, 2006. At his last official Department interview, the Respondent identified June 8 and June 15, 2005, as the two most recent dates on which he may have taken lost time, entered the male locker room and observed Scavelli and Gomez together inside the locker room. Since the Department's investigation revealed that the Respondent did not take lost time on June 15, 2005, his last observation of Scavelli and Gomez inside the locker room must have occurred on June 8, 2005. Since his most recent observation of Scavelli and Gomez inside the locker room occurred more than 18 months prior to December 12, 2006, the Respondent argued that this charge is time-barred. I disagree. The Respondent's argument is implicitly grounded on the supposition that if the Respondent had observed Scavelli and Gomez engaged in corruption or serious misconduct on June 8, 2005, the Respondent's duty to report his observations ended on June 8, 2005. I cannot subscribe to this logic. The plain language of Patrol Guide Procedure 207-21 supports the Department's position that from the time a member of the service first becomes aware of corruption or serious misconduct involving another member, the aware member is under a continuing duty to report his awareness to his Commanding Officer or to the Internal Affairs Bureau Command Center and that the aware member's continuing failure to report constitutes an ongoing violation of Patrol Guide Procedure 207-21 until such time as he personally makes the required notification and reports his awareness.

Although I reject the Respondent's contention that this charge is time-barred, I find the Respondent Not Guilty as charged because the Department offered insufficient proof that what the Respondent observed Scavelli and Gomez doing in the locker room clearly constituted corruption or serious misconduct which the Respondent was required to report. Patrol Guide Procedure No. 207-21 defines "corruption or serious misconduct" as "(c)riminal activity or serious misconduct of any kind including the use of excessive force or perjury that is committed by a member of the service whether on or off duty."

In her summation, the Assistant Department Advocate (ADA) argued that the Department had proved that the Respondent had seen Scavelli and Gomez engaging in corruption or serious misconduct in that he had observed them engaging in "intimate" (implying sexual) activity on the couch in the male locker room. The record does not support the ADA's position.

The only evidence offered by the Department in attempting to prove that the Respondent had observed Scavelli and Gomez engaging in intimate conduct was statements the Respondent made at his official Department interviews. The ADA did not attempt to enter into evidence the tape-recordings (or transcripts of the tape-recordings) from any of the Respondent's three official Department interviews. The ADA instead relied on Lamberti's recollection of what the Respondent said at his first two official Department interviews. Lamberti testified that the Respondent had stated at his first official Department interview that he had seen Scavelli and Gomez laying down intimately together on the couch inside the male locker room. However, Lamberti candidly acknowledged that the Respondent had not used the word "intimate" in

describing what he had seen and that this word was Lamberti's own interpretation of what the Respondent had described to him.

The tape-recording and transcript of the Respondent's third and final official Department interview, conducted on November 1, 2006, were offered into evidence by the Respondent's attorney (RX B). At this interview, his interviewers noted that at his previous official Department interview, the Respondent had stated that on three occasions when he had entered the male locker room to change for softball, he had observed Scavelli and Gomez engaging in "inappropriate behavior." When the Respondent was asked to describe this behavior, he stated that he had seen them "sitting on the couch. One person sitting, one person laying with their feet across the other person." (RXB p. 4)

Thus, the record that was made regarding what the Respondent said at his official Department interviews does not clearly establish that the Respondent had alleged that he had seen Scavelli and Gomez engaging in intimate behavior on the couch inside the male locker room.

Also, although the ADA called both Scavelli and Gomez as Department witnesses, they both denied that they had ever engaged in any inappropriate behavior, much less intimate activity, on the couch in the male locker room. In addition, although Kenner recalled that Scavelli's wife had stated to him and Lamberti that the Respondent had told her that he had seen her husband and Gomez "sitting on each other's lap in the locker room," Kenner's recollection is contradicted by Lamberti's contemporaneously prepared report regarding their interview of Scavelli's wife (RXA). Lamberti wrote that Scavelli's wife stated that the Respondent had told her that he had observed Scavelli and

Gomez "sitting on the couch in the male officers' locker room" and that Scavelli's wife "was unable to provide any other details concerning their activity on the couch."

Finally, Gomez testified that SOMU supervisors permitted females to enter and even sit inside the male locker room and that she was freely allowed to do so up until about a month before she left SOMU.

In sum, the Department offered insufficient evidence that the Respondent had observed Scavelli and Gomez engaging in sexual, or even intimate, activity on the couch in the male officers' locker room.

Even if I were to conclude that the Respondent saw Scavelli and Gomez lying together while fully clothed on the couch in the male officers' locker room, the Department offered no testimony or other evidence that such behavior constitutes the "corruption or serious misconduct" that is contemplated by Patrol Guide Procedure No. 207-21.

The fact that neither Scavelli nor Gomez was disciplined regarding their behavior is not, in itself, dispositive of the instant charge. However, this peculiar circumstance does raise the question of whether discipline should be imposed on the Respondent for failing to report that he had observed members engaged in a certain activity, where Department investigators have recommended that no disciplinary action be taken against the members who were involved in the specific acts which, it is alleged here, constituted reportable acts of corruption or serious misconduct.

The Respondent is found Not Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on July 8, 1986. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found guilty of engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department, created a flier by altering the information contained on the photocopy he made of Gomez' driver's license to include derogatory information about her and then distributed numerous copies of this flier within the Sex Offender Monitoring Unit.

In Disciplinary Case No. 82223/06 (approved by the Police Commissioner on March 13, 2007), a five-year member of the Department was required to forfeit 20 vacation days after he was found Guilty of intentionally transmitting sexually graphic nude photographs of himself with a female to the cellular telephone of his ex-girlfriend for the purpose of harassing and embarrassing his ex-girlfriend.

Here, as in that case, the Respondent's intent in creating and distributing the flier was to embarrass Gomez and Scavelli. Also, here, as in that case, there is a prurient element to the Respondent's misconduct in that some of the entries he made on the flier included inappropriate sexual references. However, the facts in this case differ somewhat from that case in that here the flier the Respondent created does not contain any pornographic images and he did not distribute the flier to anyone outside his work unit.

In formulating a penalty recommendation, I have taken into consideration not only the Respondent's excellent performance record and his lack of a prior formal disciplinary record over a 20-year career, but also the fact that as a result of these charges he has been assigned to modified duties at the License Division since November, 2006.

I recommend that the Respondent be required to forfeit ten vacation days.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner - Trials

